

**Freedom of Information Act 2000 (FOIA)**

Appendix 2

**Decision notice**

AUD140

**Date:** 12 November 2015

**Public Authority:** Winchester City Council

**Address:** City Offices  
Colebrook Street  
Winchester  
Hampshire  
SO23 9LJ

**Complainant:**  
**Address:**

**Decision (including any steps ordered)**

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1. The complainant made a series of freedom of information requests to Winchester City Council for information related to a contract to run a local Leisure Centre. The Council disclosed much of the requested information but also withheld and redacted some information under the section 43 (commercial interests) and section 40(2) exemptions. However the complainant did not challenge the application of section 40. The Council also said that some of the requested information was not held.
2. The Commissioner's decision is that section 43(2) is not engaged. The Commissioner did however agree with the Council's position that some of the requested information was not held.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - The Council shall disclose to the complainant the information it has withheld under the section 43(2) exemption.
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

(or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. The complainant made a number of freedom of information requests to the Council between October 2013 and May 2014 for information related to a contract with DC Leisure to run a local Leisure Centre – the River Park Leisure Centre. The Council responded to the requests by disclosing much of the information. However some information was withheld or redacted under the section 40(2) (personal information) and section 43 (commercial interests) exemptions and the Council also said that some of the requested information was not held.
6. The requests have a long and convoluted history, with many of the requests overlapping with responses from the Council to previous requests. Furthermore, many of the requests for information are themselves composed of several requests for various items of information. The Commissioner has not repeated the many items of correspondence here but has instead described the relevant correspondence as an annex to this decision notice.
7. The Commissioner has explained those elements of the requests which are still in dispute in the section below.

## **Scope of the case**

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8. The complainant initially contacted the Commissioner on 17 March 2014 to complain about the Council's decision to refuse to disclose some of the requested information.
9. Following further correspondence with the Commissioner the complainant explained that from his various requests the following information was outstanding or still in dispute.
  1. *CAB1861 unredacted version Appendices 1 and 2;*
  2. *CAB1801 unredacted version Appendix 1;*
  3. *Original contract dated 1997, with DC Leisure, unredacted;*
  4. *Extended contract dated 2011, with DC Leisure, unredacted;*
  5. *The gross annual amount of revenue generated by River Park Leisure Centre (RPLC) and Meadowside Leisure Centre (MLC) from 1997 to date;*

6. *All correspondence, email or written (including desktop and mobile generated), between the Officers namely Simon Eden, Howard Bone, Steve Tilbury, Amanda Ford and Eloise Appleby and Cllr Keith Wood related to DC Leisure, the River Park Leisure Centre or related to the original contract 31st December dated 1997 or extended contract dated 1st April 2011 between 20th October 2008 to the present day;*
  7. *The net amount, each year from 1997 to date, received by or owed to Winchester City Council (WCC) from DC Leisure (DCL) or its subsidiary(ies) or its holding company;*
  8. *The financial liability of WCC, each year to date, for the management, operation, maintenance or repair of RPLC and latterly of MLC under the 1997 contract;*
  9. *The projected annual income/profit share to WCC from the operation of RPLC and/or of MLC to the termination in 2023;*
  10. *The potential financial liability to WCC of the termination of the 1997 contract;*
  11. *If any Council officers or Councillors hold shares, directorships or any other beneficial interest or financial expectation in or from DC Leisure or any of its associated companies (this question should ideally include spouses and partners).*
10. The Council has said that it does not hold the information in items 9, 10 and that for item 11 it had explained that as far as it could establish no officer or councillors had any interests in DC Leisure. For items 7 and 8 the Council said that it had already disclosed the requested information.
  11. For parts 1 – 6 of the request the Council has redacted or withheld some of the requested information under section 43(2). In addition, section 40(2) has been applied to a small amount of personal information falling within the scope of part 6 of the request.
  12. During the course of the Commissioner's investigation the complainant said that he no longer wished to challenge the Council's application of section 40(2). Therefore the Commissioner considers the scope of his investigation to be to consider whether the Council has applied the section 43 exemption correctly and to consider whether some of the requested information is or is not held.

## **Reasons for decision**

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### **Section 43(2) – commercial interests**

13. The complainant has made a series of requests for information about the Council's River Park Leisure Centre. Since 1992 the Council has had a

contract with DC Leisure to operate the Leisure Centre and this was recently extended to 2023.

14. The withheld information in this case comprises parts of the Council's contract with DC Leisure as well as Council reports on issues surrounding negotiations for an extension to the contract. The Council has also withheld under this exemption the gross amount of revenue earned from the River Park Leisure Centre and a neighbouring leisure Centre (Medowside), and redacted some information from emails discussing the Leisure Centre, the contract with DC Leisure and the extension to the contract.
15. Section 43(2) provides that information is exempt if disclosure would or would be likely to prejudice the commercial interests of any person. The Council has said that the commercial interests are those of DC Leisure (Solent) Limited (the original contractor under the 1997 Contract), DC Leisure Management Limited (to whom the contract was novated on 11 September 2009), Leisure and Community Partnership Limited (a subsidiary of DC Leisure Management Limited which operated the management of the Centre), DCL (Holdings) Limited, the parent company of DC Leisure Management Limited, Places for People Leisure Limited (to whom the contract was novated in 2012) and its holding company Places for People Group Limited. It further argued that its own commercial interests would be likely to be prejudiced if some of the withheld information was disclosed.
16. Whilst the contract and contract extension were signed with DC Leisure, the Commissioner understands that the current operator of the leisure centre is Places for People Leisure Limited (PFP) which is what DC Leisure became after it was acquired by Places for People Group Limited in 2012. In its response to the request and in its submission the Council talked about the prejudice that would be caused to DC Leisure. Whilst the Commissioner considers that it is more correct to say that if disclosure would or would be likely to cause prejudice it would be to the commercial interests of PFP he has, for ease of reference, continued to refer to DC Leisure as if this was still the name of the current operator.
17. In order for a prejudice based exemption, such as section 43(2), to be engaged the Commissioner considers that three criteria must be met:
  - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the

information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner believes that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.
18. Furthermore, in relation to the commercial interests of third parties, the Commissioner does not consider it appropriate to take into account speculative arguments which are advanced by public authorities about how prejudice may occur to third parties. Whilst it may not be necessary to explicitly consult the relevant third party, the Commissioner expects that arguments which are advanced by a public authority should be based on its prior knowledge of the third party's concerns.
19. The Commissioner's guidance explains that a commercial interest relates to a person's ability to participate competitively in a commercial activity i.e. the purchase and sale of goods or services. In this case, the Council has explained that the information relates to a tender. The Commissioner considers that participating in a tendering process is a commercial activity, because the procurement was a competitive process by which the council intended to select a provider to deliver a service, and therefore all of the withheld information falls within the remit of section 43(2) and this first part of the prejudice test is met. When considering the nature and likelihood of prejudice the Commissioner has considered each part of the withheld information separately.
1. *CAB1861 unredacted version Appendices 1 and 2;*
  2. *CAB1801 unredacted version Appendix 1;*
20. For this information the Council explained that the CAB1861 Appendix 1 was a report from officers on the financial, legal and human resources issues relating to the negotiations for a contract extension from 2011 to 2023. The redacted information related to amount of capital investment made by DC Leisure into the Leisure Centre, the value of the performance bond provided by DC Leisure to the Council, and their request for certain clauses in the extension agreement.

21. CAB1861 Appendix 2 was a letter from DC Leisure setting out its proposal for a contract extension. The redacted information included various terms which DC Leisure were proposing, which were explained in CAB 1861 Appendix 1.
22. CAB1801 Appendix 1 was an appendix to an earlier report which considered the future of the leisure centre and its management arrangements. The appendix was a letter from DC Leisure which set out in general terms the benefits of a negotiated extension of the management contract with DC Leisure. The redacted information covered capital investment made by DC in another (local) facility, savings which could be made by incorporating a second leisure centre in the District (Meadowside) into the management contract, possible capital investment that DC could make if they secured an extension, and the costs they would incur in respect of a closure of the Centre which was planned (to allow the Council to undertake major repair works).
23. The Council explained that disclosure of this information would indicate DC Leisure's approach to tendering, and adversely affect their position vis-à-vis other contractors.
  3. *Original contract dated 1997, with DC Leisure, unredacted;*
  4. *Extended contract dated 2011, with DC Leisure, unredacted;*
24. Parts 3 and 4 of the request are for the two main contracts with DC Leisure – the original contract and the extended contract. The vast majority of the information in the contracts was disclosed to the complainant with only a very small amount redacted. The redacted elements were contained in two deeds of variation, dated 22 December 2010 and 22 March 2011 respectively. The only redaction in the 2010 document was the value of the income share threshold. The redactions in the 2011 document related to the capital expenditure to be made by DC Leisure in the Leisure Centre, and the performance bond to be provided by them during the contract period
  5. *The gross annual amount of revenue generated by River Park Leisure Centre (RPLC) and Meadowside Leisure Centre (MLC) from 1997 to date;*
  6. *All correspondence, email or written (including desktop and mobile generated), between the Officers namely Simon Eden, Howard Bone, Steve Tilbury, Amanda Ford and Eloise Appleby and Cllr Keith Wood related to DC Leisure, the River Park Leisure Centre or related to the original contract 31st December dated 1997 or extended contract dated 1st April 2011 between 20th October 2008 to the present day;*

25. The Council withheld the information in part 5 of the request in full. It disclosed most of the information in part 6 of the request but withheld 5 emails and redacted some passages from other emails which relate to DC Leisure's financial affairs, information concerning its approach to tendering, income figures for other leisure centres, the income share arrangements between DC Leisure and the Council, and the Council's landholding interests.

Items 1, 2, 3, 4 and 6

26. The Council has argued that disclosure of this withheld information would prejudice the commercial interests of DC Leisure (or rather the current operator Places for People who took over DC Leisure) because it would indicate their approach to negotiations with clients (both existing and potential), and it considered that this would "adversely affect their commercial position vis-à-vis other contractors".
27. It explained that the financial figures (such as the investment in other facilities, the level of turnover at River Park, the income share threshold and the proposed capital investment in River Park) would not be in the public domain, and disclosure of these would indicate how DC Leisure might approach a tender situation with another client such as a local authority.
28. It said that by definition, in a tender situation, bidders do not have knowledge of competitor bids, or the basis on which they are made. Leisure management contracts also usually provide for a fee to be paid by the local authority to the contractor, and the tender would be on the basis of the management fee to be paid to the contractor. Sometimes, a tender might include a requirement for investment by the incoming contractor, which would also be evaluated in the tender assessment process.
29. The Council explained that where a management fee is to be paid, it is in the local authority's interest that bids are as low as possible. Conversely, where investment by bidders is required, local authorities would want the bid for such investment to be as high as possible. Therefore, where DC Leisure are bidding for such a contract against rival bidders, and those rival bidders are aware of the approach that DC Leisure is likely to take, they would be in a better position to outbid DC Leisure, but at the same time can reduce the margin they would otherwise offer (compared to DC Leisure). This means, it argues, that a rival may win a bid when (without the knowledge) they might not have won it.

30. For the other information (such as the bond amount, the reduction in the bond amount agreed between DC Leisure and the Council, clauses sought by DC as part of the negotiations, and the assumptions set out in CAB1861 Exempt Appendix 2) the Council said that disclosure would show DC's approach to negotiations in situations such as this. It argued that this might put DC at an unfair disadvantage when they are negotiating with other clients or local authorities (who might be able to use this information against DC).

#### Item 5

31. For this information the Council explained that turnover figures from particular centres give an indication about the strength of a company and are not generally in the public domain. It argued that if this type of information were to be disclosed, it would be easier for a rival bidder in a tender situation to be able to forecast the level of bid that DC Leisure might submit for a contract, by making an assessment of costs and customer usage at River Park. They would therefore be able to submit a bid which would be closer to that of DC Leisure, and therefore improve their chances of beating a DC Leisure bid.
32. Whilst the Council acknowledged that there were no plans to tender for the management contract at River Park in the near future, it argued that the level of turnover at River Park would still be useful information for a rival bidder in a tender exercise for another centre, where DC Leisure were also bidding. It said that requiring the disclosure of these figures would therefore put DC Leisure in a worse position than its competitors, because they would not have corresponding information about the performance of their rival bidders.

#### The Commissioner's view

33. The Commissioner has considered the Council's arguments for applying section 43 and has reviewed the withheld information. Having done so, he finds that the information is focused on the particular circumstances of this contract and it is difficult to see how a rival might use that information to gain a commercial advantage in a future unspecified tender. It is important to note that the Council's argument is based on the idea that disclosure would prejudice DC Leisure's future bids for unrelated contracts, rather than any bid for the management contract for River Park Leisure Centre. Indeed, it explained that it was in a "secure contractual relationship with DC leisure until 2023 with no need to go out to market until that time". However, the Council has not provided any details of any future tenders that may be prejudiced as a result of disclosure. Therefore, to a certain extent the Council's arguments are speculative.



34. The Commissioner is satisfied that the decision to withhold this information was reached after consultation with DC Leisure, but he has seen nothing to suggest that there are other negotiations ongoing or in prospect which would be prejudiced through disclosure of this information. Neither the Council nor DC Leisure have produced any evidence to show that there are other contracts which DC is bidding for where the circumstances of the bid are sufficiently similar to this case that DC's negotiating position would be prejudiced through disclosure. In fact the Council's consultation with the third party appears to be little more than DC Leisure listing what information it would expect to be withheld. Furthermore, much of the withheld information was between two and a half to five years old at the time the complainant made his requests. The information will become less sensitive with the passage of time and where there is no obvious causal link between disclosure and prejudice then the arguments will necessarily carry less weight.
35. In particular the levels of investment, management fees and performance bond all appeared to have been agreed on the particular circumstances of this case. For instance, the levels of investment depend on the condition of the existing facilities at this particular leisure centre and what was deemed necessary to bring it up to standard. Clearly what DC Leisure might choose to invest in a dated site with old equipment will not compare with what it might propose to invest at a newer site with new equipment. The Commissioner is also mindful that the levels of investment and the management fees appear to have been decided upon through negotiation with the Council rather than any formal tendering exercise where other bidders would have been invited to bid for the contract extension. As such the information is different from what one might normally expect to find where a bidder responds to an invitation to tender and in the Commissioner's view this would be of less value to a competitor.
36. The case for withholding the non-financial information is even less convincing. The Council has suggested that disclosure of this type of information, for example DC Leisure's request for certain clauses to be included in the contract extension, would demonstrate DC Leisure's approach to negotiations. Again, without further evidence to show how this information is commercially sensitive the Commissioner must conclude that the Council has failed to demonstrate a causal link between disclosure of the information and any prejudice being caused or else that the prejudice is not "real, actual or of substance".
37. As regards the information in item 5, this asks for the turnover for the River Park site. It is also unclear how disclosure of this information would provide a competitor with a commercial advantage. Disclosure of this information would not necessarily reveal what value DC Leisure

might place on the contract for a leisure centre at another site which could be in a different area, smaller or larger and with different levels of usage. How DC Leisure and its competitors may choose to bid for other contracts will be influenced by many different factors. Again, without any further evidence about the types of contract that DC Leisure might bid for in future and the level of competition it might face, the Council's arguments amount to little more than just assertion.

38. The Council has also suggested that disclosure of the information at items 1 and 2 would prejudice its own commercial interests because suppliers to the Council in general would be deterred from tendering for Council business if they considered that the Council would disclose their confidential information. The Commissioner has considered the Council's arguments but does not accept that companies would be easily deterred from bidding for what are often very lucrative public sector contracts by the fact that some information from an unrelated contract was disclosed after that contract had been agreed. In the Commissioner's view, many companies are more likely to be prepared to accept greater public access to information about them as a cost of doing business with the public sector. The Council has also suggested that when the contract for River Park does come to be retendered in 2023 the Council would be put at a disadvantage. This is sufficiently distant that the Commissioner is not prepared to accept that disclosure would prejudice its interests a decade after the request was made. Circumstances will change with the passage of time and the information will become less sensitive. In the Commissioner's view the Council has failed to demonstrate that there is a realistic likelihood of any prejudice occurring.
39. The Commissioner has decided that the Council has failed to demonstrate that there is a causal link between disclosure and the prejudice it argued would be caused to either itself or DC Leisure. Consequently the Commissioner has found that section 43(2) is not engaged.

### **Section 1 – Information not held**

40. For items 9, 10 and, effectively, item 11 the Council has said that it does not hold the requested information. For items 7 and 8 it said that it has already disclosed the information it holds falling within the scope of this part of the complainant's requests and nothing further is held. For item 6 the complainant also suggested that the Council must hold further emails falling within the scope of this part of his request in addition to the information considered by the Commissioner above.
41. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information

that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

42. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
43. In order to assist with this determination the Commissioner asked the Council to answer the following questions:
  - What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?
  - If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.
  - If searches included electronic data, which search terms were used?
  - If the information were held would it be held as manual or electronic records?
  - Was information likely to have been held on mobile devices?
  - Were mobile devices searched?
  - Is there a business purpose for which the requested information should be held? If so what is this purpose?
  - Are there any statutory requirements upon the Council to retain the requested information?
44. For item 9 the Council explained that as part of the budget setting process each year it includes within its budget an amount for the income share predicted for the forthcoming year. However, it would not forecast the income share beyond that budget and therefore no calculations have been made for the end of contract in 2023 which is what the complainant has asked for. As such, the requested information is not held.
45. Similarly, the Council explained that for item 10 the complainant was seeking information on the potential financial liability to the Council of terminating the 1997 contract with DC leisure. It explained that this was not a calculation that had been made by the Council and therefore the information did not exist.
46. The Council explained that it had made enquiries of relevant officers who had confirmed that for both cases no such calculations had been made.

47. For part 11 of the request, the Council explained that all the named officers have confirmed they have no shareholdings. It added that the Council's Employee's Code of Conduct requires employees to declare any financial or non-financial interests that a reasonable person would consider could conflict with the interests of the Council. It confirmed that there is no record of any shareholdings in the Register of such declarations and that other than this requirement there is no other obligation on employees to record any shareholdings.
48. The Council said that its Register of Interests which Councillors must complete had also been checked but there was no record in this of any Councillors holding any shares in DC Leisure. It explained that it was possible for councillors to hold shares without having to declare these in the register (if they were below a set limit) but that if it were to hold any relevant information it would be in the Register.
49. For item 6 the complainant had suggested that the Council had not identified all of the requested information because he had not been sent any information which had been sent or received on a mobile device and neither had he received emails about the issues of "change of control" or the potential level of liability.
50. In response to the points raised by the complainant the Council explained that whilst it did issue mobile phones to certain officers these phones have a facility allowing officers to log into their office email account. It said that these link directly to the Council's Outlook system, allowing officers to read and respond to emails whilst out of the office. Therefore, any emails sent from mobile phones will have been stored in the Outlook system in the same way as if they had been sent from an office based PC and so any phones would not hold any emails other than those that have already been identified. The Council also confirmed that since officers have use of the Outlook system, they do not use the text facility to communicate Council business and for all these reasons individual phones and records were not searched.
51. The Council also provided several specific examples of where it has in fact located and disclosed emails which directly address the issues the complainant had highlighted when trying to show that the Council had not identified all the relevant information it held.
52. As to what steps it had taken to search for the information the Council explained that it had retrieved the emails from the Council's Outlook (networked) system, using a particular program to search for messages between the named officers and relevant personnel in DC Leisure/Cllr Keith Wood, between the relevant dates. These parameters would, it said, return the emails which would contain the requested information.

It confirmed that the search was carried out on messages stored in the Council's network and that rather than individual PCs the system it uses does not have the capacity to store documents other than onto the Council's network.

53. The Commissioner has considered the Council's explanations and he is satisfied that all reasonable steps have been taken to search for the requested information. For items 9 and 10 there is nothing to suggest that the Council would have made the calculations which the complainant has asked for and it would seem that what the complainant is actually asking the Council to do is to create new information. The Council has asked all the relevant people who would have knowledge of any calculations which would answer this part of his request and they have confirmed that no such calculations have been made. The Commissioner is satisfied that the requested information is not held.
54. For item 11 the Council has confirmed that it has asked the relevant people about any shareholdings and it has searched registers for Councillors and officers which are the only areas where any recorded information would be held. A public authority is only obliged to disclose recorded information, it is not obliged to create information and therefore the Commissioner is satisfied that the requested information is not held.
55. For item 6 the Council has explained in detail the steps it has taken to search for the requested information and in particular why information would not have been held on mobile devices. The Commissioner is satisfied that any relevant emails would have been located by the Council as part of its searches and there is nothing to suggest that information would have been held elsewhere.
56. For items 7 and 8, the Council explained that it had already disclosed this information to the complainant. The Commissioner has reviewed the correspondence and confirmed that this information was disclosed to the complainant on 12 September 2104 which was in response to what was his fifth request to the Council. It is unclear why the complainant considers that this information was not disclosed but in any event the Commissioner is satisfied that the Council has complied with this part of his requests.
57. Without any evidence to the contrary the Commissioner must conclude that the Council has identified and, where appropriate, disclosed all of the information requested by the complainant.

## **Right of appeal**

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58. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

59. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
60. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

### **Signed**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex – The requests**

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### **Request 9 October 2013 FOI ref 1415 (1st request)**

*Cabinet meeting 21 May 2009 Ref CAB1861*

*CAB 1801 River Park and Meadowside Leisure Centres – Management and Maintenance Arrangements, 21 May 2009*

*APPENDICES: Exempt Appendix 1: Proposal from DC Leisure Management for Extension of the Current Contract*

*Appendices from: Cabinet meeting 9th December 2009 Ref CAB1861*

*CAB1861 RIVER PARK AND MEADOWSIDE LEISURE CENTRE MANAGEMENT CONTRACT*

*Appendices Exempt Appendix 1 – Financial, Legal and Human Resource Issues*

*Exempt Appendix 2 – Formal offer and terms of proposed contract extension from DC Leisure*

A response to this request was sent on 15 November 2013. Redacted versions of the exempt appendices were sent.

### **Request 25 November 2013 (2nd request)**

This was effectively a request for an internal review of the Council's response to the 9 October 2013 request [request for the two exempt appendices without edits], combined with a further FOI request [Capita Symonds Report and Original Contract/Extended contract].

The internal review was completed and sent on 22 January 2014. The review results in redacted copies of the exempt appendices being sent (there however being less redactions than previous).

An initial response to the new FOI request was sent on 3 February 2014. This enclosed:-

- Copy Contract Agreement dated 31 December 1997
- Volume 1 of 1997 Contract
- Deed of Extension 4 July 2006
- Redacted Capita Symonds Report 2009
- Deed of Novation and associated documents 11 September 2009
- Redacted Deed of Variation 22 December 2010
- Redacted Deed of Variation 22 March 2011

A further response was sent on 10 February 2014 (enclosing volumes 2,3 5 [there is no volume 4] and 6.

A further response was sent by email 12 February 2014 enclosing volumes 7 and 8.

### **Request 23 January 2014**

*All correspondence, whether by letter or by email, between officers, namely yourself, Amanda Ford, Howard Bone, Eloise Appleby and Steve Tilbury, and DC Leisure between 20th October 2008 and the current contract dated April 2011 that may demonstrate:*

- 1. A failure to comply with the Council's obligation to enter into due tendering and procurement process;*
- 2. A failure to comply with the Council's obligation to behave with regularity, propriety and proper use of resources;*
- 3. Any financial misconduct on the part of Council officers in the negotiations with DC Leisure that led to the signing of the contract;*
- 4. Any potential maladministration on the part of Council officers in the negotiations with DC Leisure that led to the signing of the contract.*

A response was sent 24 January 2014 confirming no such information held.

### **Email from complainant 27 January 2014**

This was in response to the Council's response of 24 January 2014 to the effect that no such information held.

The complainant reiterated his request for the original and extended contract in full and referred to the 23 January 2014 request for correspondence, without including the additional wording originally included (i.e. in respect of alleged misconduct/wrongdoing).

### **Request 12 February 2014 FOI 1638 (3rd request)**

Reiterated request from 25 November 2013 and 23 January 2014 for original contracts in full and:-

*All correspondence, email or written, between the Officers namely Simon Eden, yourself, Steve Tilbury, Amanda Ford and Eloise Appleby and DC Leisure between 20th October 2008 and the current contract date 1st April 2011.*



This was treated as a new request for the correspondence without any caveats. A response was sent on 10 April 2014 and copies of the correspondence sent.

Some redactions were made, on exemptions of data protection and commercial interests (income share, value of capital improvements, value of performance bond, financial affairs of DC and associated companies).

### **Request 20 February 2014 [no FOI ref] (4th request)**

This was treated as a new request:-

- *All correspondence, email or written, between the Officers namely Simon Eden, yourself, Steve Tilbury, Amanda Ford and Eloise Appleby and DC Leisure between 20th October 2008 to the present day;*
- *All correspondence, email or written, between the Officers namely Simon Eden, yourself, Steve Tilbury, Amanda Ford and Eloise Appleby and Cllr Keith Wood related to DC Leisure, the River Park Leisure Centre or related to the original contract 31st December dated 1997 or extended contract dated 1st April 2011 between 20th October 2008 to the present day.*

A response was sent on 25 May 2014. The response pointed out that correspondence under the first bullet (up to 1 April 2011) had already been supplied. The remainder of correspondence from 1 April 2011 for the 1st bullet point, and between 20 October 2008 and present date for the 2nd bullet point was enclosed with the response.

Again, some redactions were made, on the exemptions relating to data protection and commercial interests (financial affairs of DC and associated companies, information re DC approach to tendering, income figures for other leisure centres, income share arrangements, and council's landholding arrangements).

### **Request 9 May 2014 (5th request)**

1. *Gross amount of revenue generated by RPLC/Meadowside 1997 to [09/05/14]*
2. *Net amount, each year from 1997 to date, received/owed to WCC from DC income/profit share*
3. *Financial liability of WCC, each year to date, for management/operation/repair of RPLC/MLC under 1997 as extended*
4. *Projected annual income/profit share to WCC to termination in 2023*

5. *Potential liability to WCC of termination of 1997 contract for breach, closure of facility or some other reason, such as breach of promise to engage DC to develop existing facilities/new facility*
6. *Any shares/directorships held by Council officers or councillors*

A response was sent on 12 September 2014:-

1. (Gross expenditure) – this was withheld on basis that it was seeking income information and commercial interests exemption applied.
2. Net amount income received by Council – disclosed in form of spreadsheet
3. Financial liability of Council each year - – disclosed in form of spreadsheet
4. Projected income/profit share – not disclosed, as does not exist.
5. Potential liability to Council of termination - not disclosed, as does not exist.
6. Shares/Directorships – answered to extent information held.

### **Request for Internal Review 15 September 2014**

The Chief Executive conducted an internal review of the original decision (issued 12 September 2014). An email setting out the results of the internal review was sent on 23 December 2014.

The Review agreed with the original conclusion to withhold certain information. The Council also asked the complainant to clarify what further information he had sought which had not been provided, and where he had not been given a reason for withholding information. It also asked for details of any request for a review which had not been undertaken. No response to this has been received from the complainant.